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MOTION FOR A RESOLUTION

to wind up the debate on statements by the Council and Commission

pursuant to Rule 110(2) of the Rules of Procedure

on the Review Conference on the Rome Statute of the International Criminal Court, in Kampala, Uganda

Laima Liucija Andrikiienė, José Ignacio Salafranca Sánchez-Neyra, Cristian Dan Preda, Filip Kaczmarek, László Tőkés
on behalf of the PPE Group

Richard Howitt, Ana Gomes, Véronique De Keyser, Maria Eleni Koppa
on behalf of the S&D Group

Marietje Schaake
on behalf of the ALDE Group

Barbara Lochbihler, Heidi Hautala, Eva Joly
on behalf of the Verts/ALE Group

Marie-Christine Vergiat, Helmut Scholz
on behalf of the GUE/NGL Group

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United in diversity

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European Parliament resolution on the Review Conference on the Rome Statute of the International Criminal Court, in Kampala, Uganda

The European Parliament,

- having regard to the decision of the Assembly of States Parties, adopted at its 8th plenary meeting, on 26 November 2009¹, to convene the Review Conference on the Rome Statute of the International Criminal Court in Kampala, Uganda, from 31 May to 11 June 2010,
- having regard to previous resolutions and reports on the Review Conference, and in particular Resolution ICC-ASP/7/Res.2 on the procedure for the nomination and election of the judges, the prosecutor and the deputy prosecutors of the ICC,
- having regard to its previous resolutions on the International Criminal Court, in particular those of 19 November 1998², 18 January 2001³, 28 February 2002⁴, 4 July 2002 on the draft American Service Members' Protection Act (ASPA)⁵ and 26 September 2002⁶, and its resolution of 22 May 2008⁷,
- having regard to the Rome Statute of the International Criminal Court (ICC) and its entry into force on 1 July 2002,
- having regard to the declaration of 1 July 2002 on the International Criminal Court by the Council Presidency on behalf of the European Union,
- having regard to the importance accorded by both the ICC and the EU to the consolidation of the rule of law and respect for human rights and international humanitarian law, as well as the preservation of peace and the strengthening of international security, in accordance with the Charter of the United Nations and as provided for in Article 21(2)(b) of the Treaty on European Union,
- having regard to the fact that the Council of the EU adopted Common Position 2003/444/CFSP on the International Criminal Court on 16 June 2003⁸, stating that the serious crimes within the jurisdiction of the ICC are of concern to all Member States, which are determined to cooperate for the prevention of such crimes and to put an end to the impunity of the perpetrators thereof, and with the objective of supporting the effective functioning of the Court and advancing universal support for the Court by promoting the widest possible participation in the Statute,

¹ Resolution ICC-ASP/8/Res.6.

² OJ C 379, 7.12.1998, p. 265.

³ OJ C 262, 18.9.2001, p. 262.

⁴ Texts adopted of that date, P5_TA(2002)0082.

⁵ Texts adopted of that date, P5_TA(2002)0367.

⁶ Texts adopted of that date, P5_TA(2002)0449.

⁷ Texts adopted of that date, P6_TA(2008)0238.

⁸ OJ L 150, 18.6.2003, p.67.

- having regard to the action plan to follow-up the Common Position finalised by the EU on 4 February 2004¹ for the co-ordination of EU activities, the universality and integrity of the Rome Statute and the independence and effective functioning of the ICC,
 - having regard to the adoption by the EU of a set of ‘Guiding Principles’² that fix minimum benchmarks to be respected by ICC States Parties if entering into bilateral non-surrender agreements,
 - having regard to the several decisions³ adopted by the Council of the EU in the field of justice, freedom and security with a view to strengthening cooperation among Member States in the investigation and prosecution of genocide, crimes against humanity and war crimes at national level,
 - having regard to the Stockholm Programme inviting the EU institutions to support and promote Union and Member States’ activity against impunity and to fight against crimes of genocide, crimes against humanity and war crimes, and ‘in that context [to] promote cooperation between Member States [...] and the ICC’,
 - having regard to the considerable progress made since the first ICC judges and prosecutor were elected and to the fact that the Court is currently conducting investigations in five countries (Kenya, DR Congo, Sudan/Darfur, Uganda and Central African Republic),
 - having regard to the fact that the ICC Review Conference is an opportune moment to reflect on the Court’s progress and its work for the deterrence and resolution of armed conflicts, with particular reference to UN Security Council Resolution 1325 on Women, Peace and Security,
 - having regard to the Rome Statute Explanatory Memorandum defining the jurisdiction of the ICC, which recognises rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or ‘any other form of sexual violence of comparable gravity’ as crime against humanity,
 - having regard to the statements by the Council and Commission on the Review Conference on the Rome Statute of the International Criminal Court, in Kampala, Uganda,
 - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas the EU is a staunch supporter of the ICC and promotes the universality, and defends the integrity, of the Rome Statute with a view to protecting and enhancing the independence, legitimacy and effectiveness of the international judicial process,

¹ Doc. 5742/04.

² Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the ICC and the United States regarding the Conditions to Surrender of Persons to the Court.

³ Decision 2002/494/JHA of 13 June 2002 (OJ L 167, p. 1) setting up a European network of contact points in respect of persons responsible for genocide, crime against humanity and war crimes; Framework Decision 2002/584/JHA of 13 June 2002 (OJ L 190, p. 1) on the European arrest warrant and the surrender procedures between Member States; Decision 2003/335/JHA of 8 May 2003 (OJ L 118, p. 12) concerning the investigation and prosecution of genocide, crimes against humanity and war crimes.

- B. whereas achieving the widest possible ratification and implementation of the Rome Statute has also been an EU objective during enlargement negotiations and in the process of accession by new EU Member States,
- C. whereas the EU systematically pursues the inclusion of an ICC clause in negotiating mandates and in agreements with third countries,
- D. whereas respect for, and the promotion and safeguarding of, the universality of human rights is part of the Union's ethical and legal *acquis* and one of the cornerstones of European unity and integrity¹,
- E. whereas the role of the EU as a global player has increased in recent decades,
- F. whereas its Special Representatives promote EU policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law,
- G. whereas, in April 2006, the EU became the first regional organisation to sign an agreement with the ICC on cooperation and assistance²,
- H. whereas the EU has provided more than EUR 40 million over 10 years under the EIDHR financial instrument for projects aimed at supporting the ICC and international criminal justice,
- I. whereas the ACP-EU Joint Parliamentary Assembly has been active in ensuring that international criminal justice is included in the revised ACP-EU Partnership Agreement (Cotonou Agreement) and has adopted several resolutions aimed at mainstreaming the fight against impunity in international development cooperation and relevant political dialogue,
- J. whereas this Review Conference represents a key opportunity for the States Parties, as well as non-State Parties, civil society and other stakeholders, strongly to reaffirm their commitment to justice and accountability,
- K. whereas States Parties have seized the opportunity of the Review Conference to go beyond the proposed amendments to the Rome Statute and to take stock of the ICC more than 10 years after its founding and evaluate more broadly the state of international criminal justice, focusing on four major themes, namely: complementarity, cooperation, the impact of the Rome Statute system on victims and affected communities, and peace and justice,
- L. whereas, with 111 States Parties to the ICC, some regions, such as the Middle East, North Africa and Asia, are still under-represented,
- M. whereas cooperation among states, international organisations and the ICC is essential for the effectiveness and success of the international criminal justice system, in particular in terms of law-enforcement capacity,

¹ Articles 2, 3(5) and 6 of the Treaty on European Union.

² OJ L 115, 28.04.2006.

- N. whereas, on 19 April 2010, for the first time since the creation of the ICC, a request was submitted to it for a finding of non-cooperation by a state,
- O. whereas the premise underlying the principle of complementarity, on which the Rome Statute is founded, is that it is for the state itself to investigate and, where appropriate, to prosecute persons suspected of having committed crimes under international law,
- P. whereas in most conflict situations where justice has not been incorporated as part of the peacemaking process there has been a return to violence,
1. Reiterates its strong support for the ICC and its aims; stresses that the Rome Statute was ratified by all the EU Member States as an essential component of the democratic principles and values of the Union and calls, therefore, upon the Member States to comply fully with the Statute as part of the EU *acquis*;
 2. Highlights the importance of the choice of an African country, Uganda, to host this Review Conference, and expresses support for the Court's request to open a liaison office to the African Union in Addis Ababa, while recognising the universal dimension of the 'Rome Statute system';
 3. Underlines the importance of the principle of universality of the Rome Statute and calls on the Vice-President of the Commission/ High Representative of the Union for Foreign Affairs and Security Policy actively to promote accession to and ratification of the Statute;
 4. Urges the Member States to participate in the Review Conference at the highest possible level, including Heads of State and Government, and to publicly reaffirm their commitment to the ICC;
 5. Encourages the Member States to make pledges reaffirming their commitment to the ICC and highlighting practical steps that they plan to take in support of it, by promising *inter alia* to implement the Rome Statute, ratify and implement the Agreement on Privileges and Immunities of the Court (APIC), work with other states that have fewer capabilities in order to promote universal acceptance of the Court, and affirm their contribution to strengthening the system of complementarity and cooperation, notably with regard to impact on victims and affected communities, as well as other areas of the Rome Statute;
 6. Firmly supports the inclusion in Article 5.1 of the Rome Statute of the crime of aggression within the ICC's material jurisdiction, regarding which the Special Working Group of the Assembly of States Parties to the Rome Statute has agreed that, for the purpose of the Statute, 'crime of aggression' means 'the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations';
 7. Strongly affirms that any decision on the definition of a crime of aggression must be respectful of the Court's independence; recommends that states should adopt the proposal that does not require any jurisdictional filter to determine whether an act of aggression has been committed before the ICC prosecutor can proceed with an investigation; and that if the Review Conference decides that a jurisdictional filter must be established, they should

require that the determination of whether an act of aggression has been committed be conducted by the relevant Chamber in the course of the legal proceedings already set out in the Rome Statute;

8. Calls on the Member States to engage meaningfully in the stocktaking exercise by actively participating in the official panel discussions as well as the events organised by civil society (and other stakeholders) on the margins of the official conference;
9. Urges the Member States also to take the opportunity of the Review Conference to reaffirm their commitment to the Court through specific pledges on the four stocktaking themes and to honour those commitments;
10. Supports the ICC during this Review Conference in the process of stocktaking on every stage of the implementation and impact of the Rome Statute, bearing in mind the perspective of victims and affected communities;
11. Is concerned about the impact of the Rome Statute system on victims, individuals and communities affected by the crimes under the ICC's jurisdiction; considers it essential to ensure that victims and affected communities have access to information about, and understand the work of, the Court, and that victims' rights and interests should be a primary concern for the Rome Statute community, bearing in mind that the ICC is a judicial institution that complements the primary role of states in providing protection and facilitating access to justice and effective reparations for victims, whether individually or collectively; considers that the Member States should:
 - actively cooperate when a person is subject to an ICC arrest warrant on EU territory, to facilitate the transfer of the person to the ICC for judgment;
 - acknowledge the innovative tools at the disposal of the ICC for the exercise of victims' right to justice, including the possibility for victims of participating in ICC proceedings and applying for reparations, taking into account the complementary role of the Trust Fund for Victims in the delivery of reparations and other assistance, including witness protection; ensure that victims, as well as their lawyers, benefit from adequate legal assistance and protection;
 - recognise the progress made by the Court to date in conducting outreach to affected communities and encourage it to develop that work further; and underscore the importance of ICC field operations in increasing the Court's impact among victims and affected communities;
 - pay particular attention to those groups who have been historically marginalised, such as children and women, in order to ensure that international criminal justice does not become a tool for perpetuating harm and stereotyping that may have been suffered;
 - announce a substantial financial contribution to the Trust Fund for Victims;
 - engage with civil society during the Review Conference to ensure that their views are adequately represented, including by participating in events at the People's Space being organised by the Human Rights Network;

12. Reiterates its call to the Member States to ensure full cooperation between States Parties, signatory states and the Court, in accordance with Article 86 of the Rome Statute, in order to respect the object and purpose under which, according to its Preamble, ‘the most serious crimes of concern to the international community as a whole must not go unpunished’, by the following means:
 - enacting national legislation on cooperation, in accordance with Part IX of the Rome Statute, if they have not yet done so;
 - reaffirming their commitment to provide the Court with all necessary cooperation and assistance without reservation;
 - considering concluding ad hoc agreements with the Court for the relocation of victims and witnesses and the enforcement of the Court’s sentences;
 - ensuring that cooperation becomes a standing item on the agenda of the Assembly of States Parties to the ICC, that the actual challenges and needs of the Court are discussed and that the progress made by states is measured;
13. Welcomes the revision and discussion of Article 124 (‘transitional provision’) of the Rome Statute, which allows states to choose not to have their nationals subject to the Court’s jurisdiction over war crimes for a seven-year period after ratification, and calls for its prompt deletion from the Statute so that the law is applied equally to all suspects of alleged war crimes committed in the territories of, or by nationals of, States Parties to the Statute;
14. Calls on the Member States to prioritise the inclusion as a war crime within the jurisdiction of the court of the use of certain weapons in the context of an armed conflict not of an international character, in accordance with the Belgian proposal for amendments to Article 8 of the Rome Statute, submitted to the 8th session of the Assembly of States Parties and extending criminalisation of the use of poison, poisoned weapons, asphyxiating, poisonous or other gases and all analogous liquids, materials or devices, as well as the use of bullets that expand or flatten in the body, to armed conflicts not of an international character;
15. Stresses the effectiveness of the principle of complementarity of the Court, which is the foundation of the comprehensive system of international criminal justice (the Rome Statute system) and under which the primary duty of States Parties to investigate and prosecute international crimes is clearly reinforced by the complementary (subsidiary) jurisdiction of the ICC;
16. Is deeply convinced that, during the discussions in Kampala, the Member States should:
 - reaffirm their primary obligation to investigate and prosecute war crimes, genocide and crimes against humanity, and commit to enacting in their legislation definitions of war crimes, genocide and crimes against humanity, in conformity with the Rome Statute;
 - engage in ‘positive complementarity’ by, *inter alia*, emphasising the necessity of

effective national proceedings, including in countries where there is a high need for justice, such as ICC situation countries and countries under preliminary analysis by the ICC;

- stress the importance of initiating and implementing effective national proceedings and, in particular, address the issue of lack of political willingness on the part of states;
- stress the vital importance of building the political will of states to fulfil their obligations under complementarity, and take steps to encourage states to stand on the side of justice and against impunity;

17. Urges all States Parties to the Rome Statute, especially the EU Member States, to enact or implement national legislation ensuring that they can cooperate fully with the ICC;
18. Urges all States Parties to the Rome Statute to enter into agreements with the Court on victim and witness relocation and enforcement of sentences;
19. Calls on the Union, the Member States and other international donors to support reform processes and national capacity-building efforts aimed at strengthening the independent judiciary, the law-enforcement sector and the penitentiary system in all developing countries directly affected by the commission of Rome Statute crimes, thus ensuring effective implementation of the principle of complementarity and also compliance by states with the decisions of the Court;
20. Call on the States Parties to adopt a resolution, based on the discussions in Kampala, highlighting the importance of delivering effective justice to victims, in the context of fair and impartial trials;
21. Calls on the EU Member States to renew their commitment to the ICC for the future;
22. Instructs its President to forward this resolution to the Vice-President of the Commission/ High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission and the governments and parliaments of the Member States and the candidate countries.